

REMARKS

Claims 32-35, 38, and 40 are pending in this application. Claims 1-31, 36, 37, and 39 were previously canceled. Claims 32 and 40 are amended herein.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

The Examiner rejected claims 32 and 40 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,549,584 to Gross (hereinafter Gross). In making this rejection, the Examiner stated that “Gross teaches a method of providing treating an open wound having a wound surface located inwardly of healthy skin surrounding the open wound, the method comprising: providing a relatively thin and flexible member (42, 44) having a wound contacting surface with holes (48) in the wound contacting surface, a port (28, 56) to be attached to a vacuum source (12) and a plurality of channels (interstices in absorbent fabric (52)) extending between the holes (48) and the port (28, 56), and spacers (44) coupled to the wound contacting surface . . . and providing a cover (18) over the member to define a space above the wound surface.” In particular, the Examiner asserted that “[r]egarding the interpretation of the term “channel”, it is construed herein as meaning a conduit or pathway” and further stated that “Applicants have not provided a specific definition of the term channel that precludes this interpretation.” See pages 2 and 3 of the 10/26/07 Office Action.

Anticipation exists only if all the elements of the claimed invention are present in a product or process disclosed, expressly or inherently, in a single prior art reference. *Hazeltine Corp. v. RCA Corp.*, 468 U.S. 1228 (1984). Thus, a reference does not anticipate a claim if the claim contains any limitation that is neither literally nor inherently present in that reference.

Claims 32 and 40 are each amended herein to recite that “the spacers and the wound contacting surface are made from the same material.” Support for this amendment can be found, for example, within the cross-sectional views of the member 20 shown in FIGS. 5, 7, 9, 11, and 14 of the present application which clearly show the various spacers made of the same material as the member 20 including the wound contacting surface of each member 20. Gross does not disclose or

suggest any such "spacers" which are made from the same material as any "wound contacting surface" to which they are coupled. In particular and as noted above, the Examiner points to the adhesive layer 44 of the Gross wound dressing 40 as Applicants' claimed "spacers." As noted in Gross, "[t]he portion for placement on a wound carries on one surface thereof a layer of a pressure-sensitive adhesive." See col. 4, ll. 58-60 of Gross. This adhesive layer 44 of Gross is applied to the bottom or "wound contacting surface" of the sheet material 42 of Gross. In particular, Gross states that the sheet material 42 "has a pressure-sensitive adhesive layer 44 on one surface thereof, the adhesive layer being applied to provide repeating spaced-areas 46 free of adhesive." See col. 5, ll. 19-23 of Gross. Accordingly, it is clear from Gross that the adhesive layer 44 is made from a different material than the sheet material 42 of Gross. Further, as shown in the cross-sectional views of the wound dressings 40, 50 shown respectively in FIGS. 3 and 4 of Gross, the adhesive layer 44 is made from a different material than the sheet material 42. Accordingly, Gross does not disclose any "thin and flexible member having a wound contacting surface . . . and spacers coupled to the wound contacting surface, wherein the spacers and the wound contacting surface are made from the same material," as is now recited in claims 32 and 40 of present application. Accordingly, Gross does not anticipate the methods of wound treatment recited in each of claims 32 and 40 because Gross does not disclose each of the limitations recited within newly amended claims 32 and 40. As such, reconsideration of this rejection as it applies to claims 32 and 40 is respectfully requested.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

The Examiner rejected claims 33-35 and 38 under 35 U.S.C. §103(a) as being unpatentable over Gross as applied to claims 32 and 40 and further in view of U.S. Patent No. 5,735,833 to Olson (hereinafter Olson).

In making this rejection, the Examiner stated that "Gross does not teach the step of irrigating a wound through that device" and that "Olson teaches irrigation ports (52, 64) that deliver irrigating fluids to a wound site." The Examiner then directed us to FIG. 5 of Olson and further stated

that “[a]dding these ports on Gross’ cover (18) adjacent to Gross’ port (28) would result in fluid passing through holes before irrigating the wound.” See page 5 of the 10/26/07 Office Action. Further, in Response to Applicants’ previous arguments, the Examiner stated the following on pages 6 and 7 of the 10/26/07 Office Action:

Applicants assert that Olson fails to teach a single port. This argument is not persuasive because the neck (34) of Olson can be reasonably construed [sic] a single port. Furthermore, applicants use the transition phrase “comprising.” The transitional term “comprising”, which is synonymous with “including,” “containing,” or “characterized by,” is inclusive or open-ended and does not exclude additional, unrecited elements or method steps.

The Examiner then concluded that “Applicants’ single port does not preclude additional ports.”

Respectfully, Applicants’ disagree with the Examiner’s analysis. First of all, the neck 34 of Olson’s lavage tip 10 cannot reasonably be construed as a single port. It is clear that that the neck 34 includes two separate openings 38, 40 as shown in FIG. 2 of Olson and described at col. 3, ll. 3-5 of Olson. Accordingly, the neck 34 is a single structure which *includes* two ports. The neck itself is not “a single port,” but a structure which includes two ports. Any structure which includes multiple ports cannot itself be considered as a single port. For example, a sink may include a first port configured to receive a faucet, a second port configured to receive a left handle, and a third port configured to receive a right handle. This sink clearly includes three ports. Under the Examiner’s interpretation, however, such a sink would itself be considered a single port. Obviously, such an interpretation is nonsensical and misconstrues the meaning of the term port. Clearly, therefore, Olson discloses a lavage tip having a neck which includes multiple ports.

Furthermore, the “single port” recited in claim 38 does, in fact, preclude additional ports. While Applicants agree that an indefinite article “a” or “an” when used with the term “comprising” carries the meaning of “one or more”, it is possible to limit this reading as set forth by the U.S. Court of Appeals for the Federal Circuit which recently held the following:

That “a” or “an” can mean “one or more” is best described as a rule,

rather than merely as a presumption or even a convention. The exceptions to this rule are extremely limited: a patentee must “evinced[] a clear intent” to limit “a” or “an” to “one.”

Baldwin Graphic Systems, Inc. v. Siebert, Inc., 2008 U.S. App. LEXIS 783, 10, citing *KJC Corp. v. Kinetic Concepts, Inc.*, 223 F.3d 1351, 1356 (Fed. Cir. 2000).

The court further stated that “[a]n exception to the general rule that ‘a’ or ‘an’ means more than one only arises where the language of the claims themselves, the specification, or the prosecution history necessitate a departure from the rules.” *Id.* at 10-11.

Applicants have shown a clear intent to limit the claimed port to ‘one’ by amending the claim itself to recite “a single port.” Applicants have further shown a clear intent to limit the claimed port to ‘one’ within the prosecution history, namely the response filed August 2, 2007 whereby the claimed “single port” was distinguished from Olson which clearly discloses multiple ports, as well as within the present response. Accordingly, there is no question that Applicants intend to limit the “thin and flexible member” recited in claim 38 to include only “a single port.” Such limitation specifically precludes the use of multiple ports. Applicants have now gone on record twice to reiterate this fact.

Claim 38 further recites “coupling the port of the member to a vacuum source” and “coupling the port of the member to an irrigation source.” Accordingly, the “single port” of the “thin and flexible member” recited in claim 38 is able to be coupled to both the vacuum source and the irrigation source. Olson discloses a lavage tip 10 having a liquid port 22 and separate a suction port 26, as shown in FIG. 2 of Olson. Olson further discloses a lavage tip 50 having a liquid delivery tube 52, a suction tube 54, and an oxygen delivery tube 64 as shown in FIG. 5 of Olson. In other words, the lavage tips 10, 50 of Olson clearly include multiple ports which are each coupled to only one source, such as the fluid source 12, the vacuum 14, or the oxygen source (not shown) of Olson. Accordingly, Olson does not disclose a device having a “single port” and clearly does not disclose the steps of coupling such a single port to both a vacuum source and an irrigation source, as recited in claim 38 of the present application. Gross does not make up for this deficiency of Olson.

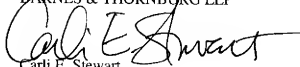
As such, the combination of Gross and Olson does not arrive at the method recited in claim 38. Withdrawal of this rejection as it applies to claim 38 is respectfully requested.

In regards to claims 33-35, each of these claims depends either directly or indirectly from independent claim 32 and incorporates all of the limitations of the respective base claim therein. As such, in view of the amendment made to claim 32 and the arguments set forth above in regards to claim 32, the rejection of dependent claims 33-35 is now moot. Furthermore, any arguments specific to claims 33-35 are held in abeyance without prejudice or admission to any assertion made by the Examiner in order to expedite prosecution. Accordingly, withdrawal of this rejection as it applies to claims 33-35 is respectfully requested.

FURTHER ACTION

In view of the foregoing remarks, the subject application is now deemed to be in condition for allowance, and such action is respectfully requested. If there are any questions or comments that would speed prosecution of this application, the Examiner is invited to call the undersigned at (317) 231-7216. It is respectfully requested that if necessary this paper be considered as a petition for an extension of time sufficient to effect a timely response and that any extension of time fees, as well as any other fees, be charged to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 with reference to file 7175-73441.

Respectfully submitted,
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